

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:**

**ATLAS PEAT & SOIL, INC.,  
SUPERIOR MULCH, INC.,  
BOYNTON BEACH, FLORIDA,**

**RESPONDENTS.**

) **ADMINISTRATIVE COMPLIANCE**  
) **ORDER ON CONSENT**  
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) **DOCKET NO. CWA-04-2020-0309**  
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**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 4.

**II. Findings of Fact and Determinations of Law**

3. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Atlas Peat & Soil, Inc., and Superior Mulch, Inc. (Respondents), are corporations formed under the laws of the State of Florida and each is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).



5. At all times relevant to this action, the Respondents owned and/or operated a mulch production facility known as Superior Mulch and a soil production facility known as Atlas Peat & Soil, both located on the same property (Facility), as identified by Standard Industrial Classification (SIC) Codes 2875 and 2499, and located at 9621 State Road 7, Boynton Beach, Florida, at latitude 26.533638 and longitude -80.207979. The Facility, which began operations in May 1989, has outdoor raw material storage, outdoor mixing and grinding operations, fuel storage, a fleet of trucks, and some equipment staging.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Florida, through the Florida Department of Environmental Protection (FDEP), authorization to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. As a State authorized to implement the CWA NPDES Program, Florida has issued a Florida Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity pursuant to Florida Administrative Code 62-621.300(5). Coverage under the Permit is obtained by submitting a Notice of Intent (NOI) to FDEP.

8. The Permit is a Florida statewide NPDES general permit governing stormwater point source discharges associated with industrial activities. To be eligible to discharge under the Permit, a facility must (1) have a stormwater discharge associated with industrial activity from its primary industrial activity, as defined in Appendix A, provided that the primary industrial activity is included in Appendix D, or (2) be notified by the FDEP that it is eligible for coverage under Sectors C and E of the Permit. The Permit also authorizes stormwater discharges from any industrial activity designated by the Department where the designation is based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Waters of the State.

9. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), a NPDES permit is required for “a [stormwater] discharge associated with industrial activity.”

10. “Stormwater discharge associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14), means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.

11. Pursuant to 40 C.F.R. § 122.26(b)(14)(ii), “[f]acilities classified within Standard Industrial Classification ... 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373,” are considered to be engaging in “industrial activity” for purposes of 40 C.F.R. § 122.26(b)(14).

12. On July 8, 2019, representatives of the EPA and FDEP performed a Compliance Stormwater Evaluation Inspection (CSWEI) at Respondent’s Facility to evaluate the Respondent’s compliance with the requirements of Sections 301 and 402(p) of the CWA, 33



U.S.C. §§ 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

13. On August 27, 2019, the EPA issued an Inspection Report to the Respondent.

14. The Inspection Report indicated that during the CSWEI, the EPA inspectors observed the following:

- A. Outdoor raw material storage, outdoor grinding and mixing operations, fuel storage, a fleet of trucks, and equipment staging with several drainage ditches containing tannic colored water.
- B. The Facility is a mulch production facility (SIC Code 2499, 2875 and 3295) but has not submitted an NOI for coverage under the existing Permit or obtained a No Exposure Certification.

15. On April 13, 2020, the EPA issued a Notice of Potential Violation and § 308 Information Request to the Respondent.

16. In accordance with Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations, based on the CSWEI and due to the hydrology of the Facility and historic rainfall data, the EPA has determined that from the time industrial operations at the Facility began, to present, stormwater associated with industrial activity generally discharged from the Facility via sheet flow and an unnamed drainage ditch on the west side of the facility, to an unnamed wetland, then to WCA1 South Sector (WBID 3252E) which is an Everglades Marsh in the Loxahatchee National Wildlife Refuge. The unnamed drainage ditch outfalls to E-1 Canal (WBID 3262B) to the east side of the Facility. The E-1 Canal connects to the C. Stanley Weaver Canal which connects to Boynton Canal and then to the intercoastal waterway.

17. The intercoastal waterway is a traditionally navigable water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and its implementing regulation 40 C.F.R. § 122.2

18. Therefore, the Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by discharging stormwater without proper authorization to waters of the United States.

### **III. Agreement on Consent**

19. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), THE DIRECTOR HEREBY ORDERS AND THE RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW:

- A. The Respondent shall submit a copy of the NOI, FDEP's letter of coverage, and coverage number to the EPA within thirty (30) days of the Effective Date of this AOC.



B. Within thirty (30) days of the Effective Date of this AOC, submit to EPA a determination of whether the Facility discharges to a Municipal Separate Storm Sewer System (MS4) and, if applicable, a copy of the notification provided to the MS4 in accordance with Permit Part VI.A.2. and VI.D.1. A current list of these systems should be obtained from the FDEP.

C. Submit a copy of the site-specific Stormwater Pollution Prevention Plan (SWPPP) including all sector-specific requirements required by the Permit Part VI.C and VI.D as well as identification of all shared pipes, ponds, or other best management practices, a detailed assessment of the drainage of the site, and an assessment of the receiving waters (including information on any existing 303(d) listed impairments or Total Maximum Daily Loads) for all discharge points which may include streams, rivers, or municipal separate storm sewer systems. The SWPPP shall include periodic inspections that are not less frequent than every two (2) weeks. The employee training frequency shall not be less frequent than twice per year. No substantially identical outfalls may be designated until four (4) quarters of monitoring data has been collected to support the determination. Submit the SWPPP to the EPA within ninety (90) days of the Effective Date of this AOC.

D. Submit one (1) wet weather inspection in accordance with Permit Part 5.a.(1)(c) within one hundred and eighty (180) days of the Effective Date of this AOC.

E. Submit documentation of one quarterly Visual Assessment for each outfall in accordance with Permit Part VI.E.8. within one hundred and twenty (120) days of the Effective Date of this AOC. Documentation shall include when the rain event began and when discharge began as well as the minimum documentation criteria in accordance with the Permit. At least two photos of each visual assessment shall be provided (one of the sampling location at time of sampling and one of the sample in the clear container photographed against a white background) with date and time of photos.

F. Submit documentation of one annual Comprehensive Site Inspection in accordance with Permit Part VI.C.4. and 5.a.(1)(j) within one (1) year of the Effective Date of this AOC.

G. Conduct Numeric Effluent Limit monitoring for the first four (4) full quarters of permit coverage for the parameters listing in Table C-10. If the permittee collects more than four (4) samples in this period, then they must calculate an average concentration for all parameters analyzed, not simply a minimum of four selected analysis. Within sixty (60) days of each exceedance of the Numeric Effluent Limit, the permittee shall add an additional BMP designed to specifically address the parameter exceeded. Submit documentation within fourteen (14) months of the Effective Date of this AOC.

H. Conduct benchmark monitoring and any associated additional Best Management Practice (BMP) implementation for the first four (4) full quarters of permit coverage and submit documentation within fourteen (14) months of the Effective Date of this AOC.



See Permit Table C-11 for pollutant monitoring requirements:

- a. If a sample exceeds the cut-off concentration for the applicable pollutant in Permit Table C-11, then for the first and second exceedance at an outfall, an additional BMP will be implemented to address the exceedance.
- b. If the 95<sup>th</sup> Percentile for the applicable pollutant in Permit Table C-7 is exceeded for the third exceedance at an outfall, a structural BMP shall be implemented to address the exceedance.
- c. If after the third exceedance, another exceedance occurs at the outfall then the sample shall be compared to the 99<sup>th</sup> Percentile in Permit Table C-7. If the sample exceeds the 99<sup>th</sup> Percentile, then an additional structural BMP designed by a Professional Engineer to address the exceedance shall be implemented at the applicable outfall.

20. The Respondent may submit a request, in writing, for an extension of time to comply with the requirements of this AOC at least seven (7) calendar days in advance of the required completion date. Such request must include the reason(s) for the extension and an expected date when compliance will be achieved. Any extension must be granted by the EPA in writing to be effective.

21. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of the Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

22. All reports, notifications, documentation, and submittals required by this AOC shall be sent by certified mail or its equivalent to the following addresses:

LCDR Tara L. Houda  
Water Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303



and

Leandro Garcia  
Florida Department of Environmental Protection  
2600 Blair Stone Road, MS 3585  
Tallahassee, Florida 32399-2400

#### **IV. Final Report and Termination of AOC**

23. Within thirty (30) calendar days after the Respondent has fully completed and implemented the actions required by Section III (Agreement on Consent) of this AOC, the Respondent shall submit for the EPA's review and approval a final report (Final Report) that includes: (a) a description of all of the actions which have been taken toward achieving compliance with this AOC; (b) an assessment of the effectiveness of such actions; (c) an evaluation of any benchmark or effluent limit exceedances and the effectiveness of any BMPs that were implemented to address exceedance; and (d) an analysis of whether additional actions beyond the scope of this AOC are necessary to further comply with the CWA, this AOC, and the Permit.

24. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to the Respondent and this AOC shall be deemed terminated.

25. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify the Respondent, provide a list of deficiencies, and may require the Respondent to modify its actions as appropriate in order to correct such deficiencies. If so required, the Respondent shall implement the modified and approved requirement(s) and submit a modified Final Report in accordance with the EPA notice. Failure by the Respondent to implement any of the approved modified requirement(s) shall be a violation of this AOC.

#### **V. General Provisions**

26. The Respondent's compliance with this AOC does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 et seq., its implementing regulations, or with the Permit. The Respondent shall remain solely responsible for compliance with the terms of the CWA, its implementing regulations, this AOC, and the Permit.

27. Nothing in this AOC shall constitute a waiver, suspension, or modification of the terms and conditions of the Permit, which remain in full force and effect.

28. Failure to comply with the requirements herein shall constitute a violation of this AOC and the CWA, and may subject the Respondent to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).



29. This AOC shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state, or local permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

30. Issuance of this AOC shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment under the CWA or any other federal or state statute, regulation, or permit.

31. The EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this AOC and to enforce this AOC.

32. Nothing in this AOC is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this AOC.

33. This AOC applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors, and assigns.

34. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this AOC.

35. The Respondent admits to the jurisdictional allegations set forth within this AOC.

36. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to any right of judicial review of the AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

37. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this AOC.

38. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), the EPA has sent a copy of this AOC to the State of Florida.


39. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

**VI. Effective Date**

40. This AOC shall become effective upon receipt by the Respondent, or if represented by counsel, Respondent's counsel, of a copy of the fully executed AOC.


**IT IS SO AGREED,**

**BY ATLAS PEAT & SOIL, INC.:**

  
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Brian Lulfs  
Registered Agent

Date: 6-11-20

**BY SUPERIOR MULCH, INC.:**

  
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Michelle Lancianese  
Registered Agent

Date: 6-11-20

**BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

\_\_\_\_\_  
Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division

Date: \_\_\_\_\_